IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16144 of 2004
with
SPECIAL CIVIL APPLICATION No 15736 of 2004
with
CIVIL APPLICATION No 108 of 2005
in
SPECIAL CIVIL APPLICATION No 16144 of 2004
with
CIVIL APPLICATION No 332 of 2005
in
SPECIAL CIVIL APPLICATION No 16144 of 2004
with
CIVIL APPLICATION No 9919 of 2004
in
SPECIAL CIVIL APPLICATION No 15736 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ZILVANA DUDH UTPADAK SAHAKARI MANDALI LTD.

Versus

DY. COLLECTOR AND ELECTION OFFICER

Appearance:

1. Special Civil Application No. 16144 of 2004
MR PK JANI for Petitioner No. 1
MR SIRAJ GORI, AGP for Respondent No. 1-2
RULE SERVED for Respondent No. 1-3
MR MK VAKHARIA for Respondent No. 3
2. Special Civil Application No. 15736 of 2004
MR MK VAKHARIA for Petitioner No. 1
MR SIRAJ GORI, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 02/03/2005

CAV JUDGEMENT

1. Zilvana Dudh Utpadak Sahakari Mandali Ltd., petitioner, has filed this petition with a prayer that this Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the Deputy Collector & Election Officer, Mehsana respondent No.1 and the District Registrar - respondent No.2 to prepare the voters list for the elections to the Managing Committee of respondent No.3 Sangh seatwise and be further pleased to direct respondents No.1 and 2 to hold the elections to the Managing Committee of respondent No.3 - Sangh seatwise, so that the voters of a particular constituency vote only for candidates of that particular constituency and not for the candidates of all the constituencies. The petition was filed on 8th December, 2004.

2. When the matter was placed for hearing before this Court on 17th December, 2004, the Court issued notice and thereafter on 29th December, 2004, my learned Brother Justice K.S.Jhaveri has passed the following order:

"Rule. The respondent authorities will initiate the election process as expeditiously as possible and preferably within a week from today."

3. Thereafter the matter was again placed for hearing on 10th February, 2005, and on that day this Court has passed the following order:

"Rule to be made returnable on 23rd February, 2005. Mr.Mehul Vakharia, learned advocate waives service of rule on behalf of respondent No.3. Mr.Siraj Gori, learned AGP waives service of rule on behalf of respondents No.1 and 2. All other cognate matters to be heard with this matter on 23rd February, 2005."

4. That is how this matter has been taken up for final disposal as this being an election matter.

5. The facts giving rise to this petition are as under:

5.1 The petitioner is the Chairman of Zilvana Dudh Utpadak Sahakari Mandali Ltd. The petitioner is the member of Mehsana District Co-operative Milk Producers Union Limited (Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited). In the list prepared by the Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited, for the purpose of preparing the provisional list of voters, the petitioner society's name figures at Sr.No.261.

5.2 It is the case of the petitioner that the respondent No.3 - Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited is a co-operative society registered under Sec.10 of the Bombay Cooperative Societies Act, 1965 and it is deemed to have been registered, as such, under the provisions of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act"). The area of operation of Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited is undivided district of Mehsana which includes Patan District, Mehsana District and certain talukas of Gandhinagar District. The bye-laws of respondent No.3 Sangh are duly approved by the Registrar, Co-operative Societies. That respondent No.3 Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited is a specified co-operative society.

5.3 It is the case of the petitioner that in 2001 the election of respondent No.3 - Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited was held. That the term of members of the Managing Committee of respondent No.3 - Sangh has come to an end and, therefore, in accordance with the provisions of the Gujarat Co-opreative Societies Act and also in accordance with the rules framed thereunder, more particularly, the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982, the election of members of the Managing Committee of respondent No.3 - society will take place.

5.4 It is the case of the petitioner that the petitioner filed this petition before this Court praying that, considering the vast geographical area of Mehsana District, part of Patan District and part of Gandhinagar District, the voters list may be prepared seatwise and the elections to be held accordingly. It is the case of the petitioner that there are as many as 1048 village

level Milk Producers' Co-operative Societies, which are the members of respondent No.3 - Sangh. These societies are situated in different talukas of Mehsana District, Patan District and Gandhinagar District. A society's representative, who is staying in a remote taluka, i.e. Sami Taluka, in the case of the petitioner' may not have the acquaintance or may not be knowing the abilities of a candidate who is contesting for a seat in a different talukas. As against that, if the elections are held seatwise, with the voters of that seat only to elect their representative, it would be in consonance with the elections which are being held for Legislative Assembly seats, Lok Sabha seats, and in Gram Panchayats and Municipalities. In these elections, a voter is not entitled to vote for all the candidates of all the constituencies, but he is eligible to vote for candidates who are contesting in his constituency. That the election programme published by the Election Officer for holding the election of Mehsana District Central Co-operative Bank Limited is for holding the elections seatwise.

5.5 It is the case of the petitioner that certain co-operative societies, including the petitioner society have made certain representation in this behalf to the District Registrar, Co-operative Societies, but till this date the Election Officer has not declared the election programme for holding the elections of Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited and the election process has not begun and no notification for initiating the process of holding the elections is published and only provisional list is submitted by the Managing Director of respondent No. 3 - Sangh to the Election Officer.

5.6 In this behalf Mr.P.K.Jani, learned advocate for the petitioner has invited my attention to the list prepared by Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited. For the purpose of preparing provisional list of voters the petitioner's society shown at Sr.No.261 which is produced at Annexure "A". The said list is prepared as on 31st March, 2004.

5.7 The learned advocate for the petitioner has further pointed out that the bye-laws of respondent No.3 - Sangh are duly approved by the Registrar, Co-operative Societies and is a specified co-operative society in this behalf.

5.8 In the petition the petitioner prayed that the election of the Managing Committee of respondent No.3

which may take place at any time may kindly be directed to be held seatwise and not as a whole as in the case of Mehsana District Central Cooperative Bank Ltd. For that purpose he has relied upon bye-laws of Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited which is produced at Annexure "B".

5.9 The learned advocate for the petitioner has relied upon the judgment of this Court in the case of Mehsana District Central Co-operative Bank Limited & Anr. Vs. Election Officer of the Mehsana District Central Co-op. Bank Ltd. and others reported in 2002(1) GLR 774. In that case this Court considered the election of Mehsana District Central Co-operative Bank Ltd. and after considering the provisions of the Act and the Rules, in para 6.1, 6.2 and 6.2A this Court observed as under:

"6.1 In my view the order passed by respondent No.1 is perfectly justified, as per the provisions of Rules 5 and 6 as there are 10 Directors are to be elected and there are 10 talukas. The election officer is perfectly justified in deciding the fact that voters' list will be as per the talukas so that all the persons who are voters of the said talukas will have a right to cast their vote amongst the said candidates. In my view, the order of respondent No.1 is in consonance with the Act, Rules, Bye-laws and bank rules. The learned Counsel for the petitioners could not point out any error apparent on the face of the record or any jurisdictional error committed by respondent No.1 in this behalf.

"6.2 In my view, it may be true that the procedure as contended by the learned Advocate for the petitioner continued right from the year 1982. However, the procedure which has been followed by respondent No.1 in the aforesaid communication dated 5.7.2001 is in consonance with the existing provisions of the Co-operative Societies, Act, Rules, Bye-laws and Co-operative Bank Rules. Therefore, in my view, there is no infirmity or illegality in the said decision arrived at by respondent No.1.

"6.2(a) In view of my aforesaid conclusion, the Notification issued at Annexure-I stating the programme of election is legal and valid. It has also been contended that the said Notification is

not as per the format prescribed under the Co-operative Societies Rules. The procedure prescribed under the format is merely procedure prescribed under the Act, but if the Notification is issued not containing only one format on that ground the Notification cannot be held to be illegal or bad in law. The substance of the format has to been seen in this behalf. The reasons which I have indicated for upholding the order of respondent No.1, the same will apply to the Notification also."

5.10 Relying upon the said judgment, the learned advocate submitted that the prayer of the Mehsana District Central Co-operative Bank Ltd. to hold the elections not on areawise i.e. seatwise but to give the right to a voter to elect all the members in the entire constituencies has been negatived.

5.11 He has stated that in this behalf the petitioner has made representation dated 21st September, 2004, to the District Registrar. As the respondents have neither replied nor pass any order, the present petition has been filed.

5.12 Mr.P.K.Jani, learned advocate for the petitioner has invited my attention to the bye-laws No.35 particularly 35(1)(A)(1). After relying upon the same he has stated that in this case there are 11 seats of different Talukas mentioned therein. However, the voters which are situated in Sami and Harij Taluka not only they can vote for that particular talukas but also to vote for other talukas also. This is contrary to the basic election scheme. In this behalf he has already referred to the judgment of this Court which I have referred earlier in this behalf.

5.13 He has also relied upon a Division Bench judgment of this Court in the case of Siddhpur Taluka Co-operative Purchase & Sales Union and others Vs. State of Gujarat and others reported in 2002(2) GLR 1357.

5.14 He states that in this case the petitioner has a prima facie case and interim relief as prayed for is not granted then at the final hearing nothing will remain and, therefore, interim relief should be granted because there will be no question of final hearing but when the matter reaches final hearing everything will be over.

5.15 In this context he has relied upon the judgment of the Hon'ble Apex Court in the case of Deoraj Vs.

State of Maharashtra and others reported in AIR 2004 SC 1975 particularly para 13 on page 1978 and 1979 the Hon'ble Apex Court observed as under:

> "The present one is a case where we are fully satisfied that a foolproof case for the grant of interim relief was made out in favour of the petitioner in the High Court on the basis of the material available before the Court.
> ... Unless something was brought to the notice of the Court either by way of material in the shape of documents or affidavits or even by way of a plea raised before the Court which could come in the way of the relief being granted to the writ petitioner, in the case of such a nature, the interim relief ought to have been granted. The writ petitioner-appellant is right in submitting that the election was for a period of one year out of which a little less than half of the time has already elapsed and in the absence of interim relief being granted to him there is nothing which would survive for being given to him by way of relief at the end of the final hearing."

6. On the other hand, on behalf of respondent No.3 and other contesting respondents, Mr.K.G.Vakharia, learned Senior Counsel for Mr.Mehul Vakharia appears. It has been submitted that in this case the first process of election has been started by the Election Officer by issuing a notification dated 6.1.2005 whereby instructions are issued for the purpose of preparation of voters list for holding election of 16 elected members of the Board of Directors. Accordingly, provisional voters list was published on 7th January, 2005 and the last date of raising objections against the provisional voters lists was 13th January, 2005, and the date for deciding the objections raised against the provisional voters list is 24.1.2005 and the date for publication of the final voters list is 25.1.2005. I am told that the final election is likely to be held on 4th March, 2005. Learned Senior Counsel submitted that in this case the election process has already been started and this Court may not pass any order by which the election process is disturbed.

6.1 In support of the same, he has relied upon the judgment of the Hon'ble Apex Court in the case of Manda Jaganath Vs. K.S.Rathnam and others reported in AIR 2004 SC 3600 particularly para 21 on page 3606 the Hon'ble Apex Court observed like this:

"We are not recording any conclusive opinion in regard to the applicability of the above statute, Rules and Orders because, as stated above, it is a matter to be decided in an election petition. Suffice it to say that the High Court on facts of this case, could not have interfered with the decision of the Returning Officer to reject Form B filed by the first respondent."

6.2 The learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others reported in (2001) 8 SCC 509, particularly para 12 on page 518 the Hon'ble Apex Court observed like this:

"In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

6.3 The learned Senior Counsel has also relied upon the judgment of this Court in the case of Hasmukhbhai Jugatram Raval Vs. The Collector, Surat and others reported in 1983(2) GLR 1301 particularly contest of election this Court has held in para 4 on page 1304 like this :

"... Put in no democratic institution the process of election should be stopped in between otherwise it would lead to an absurd result and, therefore, whenever in any law there is a provision for election the Legislature has seen to it that as soon as the election process starts no court stops that election process though ofcourse the court has enough powers to declare

the election of a particular individual and even of all individuals invalid if the election is not held in accordance with law. But that is the machinery which is restored to after the election is over."

6.4 The learned Senior Counsel has also relied upon an identical judgment of this Court in the case of Kanubhai Chhaganbhai Patel Vs. Director of Agricultural Marketing & Rural Finance, Gandhinagar and others reported in 2004(3) GLR 2718, particularly para 6 on page 2725 the Court has held as under:

"If pick and choose policy is adopted for examining some cases of rejection or acceptance of nomination papers and not others, in face of the proximity of the voting dates, it would amount to circumventing the settled legal position that if an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election in any manner, the invoking of judicial remedy has to be postponed till after the completion of proceedings in elections. (See Paragraph 32(1) of the decisions of the Supreme Court in Election Commission of India v. Ashok Kumar & Ors., reported in AIR 2000 SC 2979 : 2000(8) SCC 216). Therefore, in face of a genuine possibility of any exercise of extraordinary jurisdiction at this stage causing the effect of interrupting, obstructing or protracting the election proceedings, in our opinion, judicial remedy is required to be postponed in all these matters till after completion of the proceedings in elections in view of the above settled legal position. All these petitions are, therefore, summarily rejected."

SPECIAL CIVIL APPLICATION No 16144 of 2004

CONCLUSION:

7. In view of the aforesaid facts and circumstances of the case, particularly in view of the judgment of the Hon'ble Apex Court in the case of Manda Jaganath vs.

K.S.Rathnam and others (supra), Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dughda Utpadak Sanstha and another (supra), judgment of this Court in the case of Hasmukhbhai Jugatram Raval vs. Collector, Surat (supra), Kanubhai Chhaganbhai Patel vs. Director of Agricultural Marketing and Rural Finance (supra). I have also considered the judgments cited by the learned advocate for the petitioner in the case of Deoraj vs. State of Maharashtra and others (supra), Division Bench judgment of this Court in the case of Siddhpur Taluka Co-op. Purchase and Sales Union and others (supra), and also the judgment of this Court in the case of Mehsana District Central Co-op. Bank Ltd. (supra) and also the provisions of the Act and Bye-laws No. 35 particularly 35(1)(A) in this behalf. Here the election process is already started and, therefore, it will not be proper for this Court to interfere in this behalf and therefore the petition is rejected at this stage. It will be open for the petitioner to file election petition in this behalf. The judgment of this Court in Mehsana District Central Co-operative Bank Limited and another Vs. Election Officer of the Mehsana District Central Co-op. Bank Ltd. and others (supra) will not help the case of the petitioner, in fact in that matter also in para 6.3 this Court has taken the same view which reads as under:

> "In my view, under Art.226/227 of the Constitution of India, particularly in election matters, this Court has a very limited jurisdiction and in view of the same, I am of the view that if the order of the respondent No.1 is interfered at this stage, it will unnecessarily thwart the whole election process and it will be contrary to various judgments of the Supreme Court. In my view, I do not find any substance in the contention raised by the learned senior Counsel appearing for the petitioners and the petition requires to be rejected and the same is rejected. Interim relief which has been granted is vacated. However, due to pendency of the petition, if the election process is delayed, namely, regarding acceptance of nomination forms etc. respondent No.1 is directed to see that election is accordingly held changing suitable dates in this behalf."

7.1 Therefore, in my view, the conclusions reached therein which also supports the case of the respondents and therefore there is no substance in the petition. The petition is rejected with no order as to costs. Rule is discharged.

CIVIL APPLICATION NO 332 of 2005

8. Mr.Harin Raval, learned advocate has filed civil application No.332 of 2005 in the main matter i.e. in Special Civil Application No.16144 of 2004 with a prayer that the applicant - Gunja Milk Producers Co-operative Society Limited may be joined as party respondent No.4 in Special Civil Application No.16144 of 2004. Perused the application and heard Mr.Harin Raval, learned advocate for the applicant. Prayer in terms of para 28(A) is granted. In view of this, the civil application is allowed. The applicant Gunja Milk Producers Co-op. Society Ltd. is joined as party respondent No.4 in the main matter i.e. in SCA No.16144 of 2004.

CIVIL APPLICATION No 108 of 2005.
in
SPECIAL CIVIL APPLICATION No 16144 of 2004

9. I have considered the facts and circumstances of the case. The election process is already started and therefore there is no question to interfere with the election process at this stage and, therefore, no interim relief is required to be granted in this behalf as it will amount to disturb the election process and in view of the fact that I have already decided the main matter, and therefore this civil application is rejected with no order as to costs.

CIVIL APPLICATION No 9919 of 2004
in
SPECIAL CIVIL APPLICATION No 15736 of 2004

10. I have gone through the same and heard Mr.V.C.Vaghela, learned advocate for the applicant in this behalf. Prayer in terms of para 4(a) is granted. This civil application is accordingly disposed of with no order as to costs.

SPECIAL CIVIL APPLICATION No 15736 of 2004

11. In this matter the petitioner - Mehsana District Cooperative Milk Producers' Union Limited has filed this petition with a prayer that this Court may direct the

respondents to hold the election of the Board of Directors of the first petitioner union as expeditiously as possible and to take appropriate steps as expeditiously as possible on the basis of Old Mehsana District as in existence prior to the Notification dated 24th September, 1997.

11.1 It may be noted that in this matter my learned Brother Justice K.S.Jhaveri has admitted the matter on 29th December, 2004, and directed the respondent authorities to initiate the election process as expeditiously as possible and preferably within a week from today.

12. In view of the same, this petition has become infructuous as the relief prayed for is already granted. In view of the same, this petition also stands disposed of as having become infructuous. Rule is discharged with no order as to costs.

(K.M. Mehta, J.)

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